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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,891	07/09/2003	Trenton L. Tate	23008.00	8959
37833	7590	11/04/2004	EXAMINER	
LITMAN LAW OFFICES, LTD. P.O. BOX 15035 CRYSTAL CITY STATION ARLINGTON, VA 22215			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER

3765

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/614,891

**Applicant(s)**

TATE, TRENTON L.

**Examiner**

Alissa L. Hoey

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-11 is/are rejected.
- 7) ☒ Claim(s) 4 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: identifier 44 is found in the drawings but not referred to in the specification.

Appropriate correction is required.

### ***Claim Objections***

2. Claim 6 is objected to because of the following informalities: it is unclear how the jacket can be made from 100% mesh nylon and still and contain an absorbent layer. Do you mean the outer layer of the garment is 100% mesh nylon? Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patagonia (Infurno Jacket) in view of Patagonia (Nemo Dry Top).

In regard to claims 1, Patagonia (Infurno Jacket) provides a garment that is capable of being worn as a shirt. The garment of Patagonia is a moisture absorbing garment having pockets to hold valued item therein. The garment having an exterior surface, an interior surface, a front portion, a rear portion, a bottom portion and side

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portions. A plurality of waterproof pockets disposed along the exterior surface of the garment and an absorbent layer disposed along the bottom portion of the interior surface of the garment. A hem stitched around the entire bottom portion of the garment with a drawstring therein (see Infurno Jacket picture and description).

However, Patagonia fails to specially show the drawstring having ends that extend from a plurality of apertures in the hem and a stopper clamps on the ends of the drawstring.

Patagonia (Nemo Dry Top) teaches a jacket having drawstring having ends extending from an aperture located in the hem and having a stopper clamp connecting the ends of the drawstring together (see Nemo Dry Top picture and description).

However, Patagonia (Nemo Dry Top) fails to teach the hem having a plurality of apertures located along the hem.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the hem having two apertures for the drawstring to extend because Applicant has not disclosed that the hem having two apertures for the drawstring to extend provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the hem having two apertures or one aperture as long as both ends of the drawstring extended out of the aperture to be connected with a cordlock capable of adjusting the bottom of the garment. Therefore, it would have been an obvious matter of design

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choice to modify Patagonia (Nemo Dry Top) to obtain the invention as specified in claim 1.

5. Claims 1, 5, 6, 7 and 9-11 rejected under 35 U.S.C. 103(a) as being unpatentable over Murakami (US 4,541,129) in view of Nelson (US 2,709,815) and Patagonia (Nemo Dry Top).

Murakami provides a sport T-shirt having absorbent towel material located on the interior portion of the shirt (figures 1-3, identifier 3 and 3a: column 1, lines 40-68 and column 2, lines 29-43). The T-shirt is made of cotton material (column 2, lines 18-26). The towel material is attached to the garment by stitching and is located along the inner bottom front of the shirt (column 1, lines 49-57: figure 1 and 2, identifier 3a).

It is well founded in the textile art that towel material is looped pile commonly called terry cloth. Further, it is well known to use cotton in pile fabric due to its superior absorbency properties.

In regard to claim 7, requiring the shirt to be made out of nylon mesh, the specification states no critical reason as to why the shirt has to be made out of a nylon mesh as long as the shirt is made from a soft material. The shirt of Murakami is made out of cotton which is a soft material.

However, Murakami fails to teach the shirt having waterproof pockets and a drawstring waist. Nelson provides waterproof pockets to be attached to garments (figures 1-6: column 1, lines 12-24) and Patagonia provides a drawstring waist with a

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plastic stopper clamp connecting two ends of the drawstring together (see Nemo Dry Top picture and description).

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the hem having two apertures for the drawstring to extend because Applicant has not disclosed that the hem having two apertures for the drawstring to extend provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the hem having two apertures or one aperture as long as both ends of the drawstring extended out of the aperture to be connected with a cordlock capable of adjusting the bottom of the garment. Therefore, it would have been an obvious matter of design choice to modify Patagonia (Nemo Dry Top) to obtain the invention as specified in claim 1.

It would have been further obvious that the drawstring could be made out of 100% polyester, since the drawstring could be made out of any material as long as it is durable enough to provide adjustment to the bottom of the garment. The specification states no criticality of the drawstring being polyester so any material that provides durable adjustment would be sufficient including a drawstring made out of shockcord as taught by Patagonia (Nemo Dry Top: see description).

Additionally, it would have been obvious for the stopping clamp (or cordlock) of Patagonia (Nemo Dry Top) to be made out of plastic with a metal spring built inside, since cordlocks used on garment especially for sporting purposes is made out of a

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softer plastic material as opposed to a metal material. The spring is an obvious essential aspect of the cordlock to provide for gripping and releasing of the drawstring during adjustment.

Nelson provides waterproof provides pockets of fabric with a lining of rubber/polyester (column 1, lines 41-46). The waterproof pockets have a flap with snap fasteners for affixing the flap closed over the pocket (figure 2, 3 and 5, identifiers 18 and 20). It would have been obvious that the waterproof pocket of Nelson could be provided on the garment of Murakami, and to have provided two pockets at the lower side of the shirt, since the lower side of the shirt is a good location for the hands of the user to place things in and take things out of the pocket with ease.

Further, It would have been obvious that the pocket flap fasteners of Murakami could be hook and loop fasteners, since hook and loop and snap fasteners are equivalent fastening devices and therefore interchangeable. It would have been further obvious that the hook and loop fasteners located on the pocket and the pocket flap could be in the shape of horizontal strips, since the shape of hook and loop fasteners does not effect the fastening properties and therefore could be any shape as desired for end use.

It would have been obvious to have provided the shirt with absorbent material of Murakami with the waterproof pockets of Nelson and the drawstring and stopper clamp of Patagonia, since the shirt with absorbent material, waterproof pocket and drawstring with stopper clamp provides a shirt for use in sport activities so that one can wipe sweat away with the absorbent material, hold items in the pockets so they don't get wet or lost

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and a drawstring waist to provide proper fit so that the shirt doesn't get caught on any objects during movement.

6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murakami, Nelson and Patagonia (Nemo Dry Top) in view of Ketcham et al. (US 4,870,706).

Murakami, Nelson and Patagonia provide a shirt as described above in claim 1. However, Murakami, Nelson and Patagonia fail to teach pockets affixed over the side seams of the garment. Ketcham et al. provides a shirt with pockets affixed over the side seams at the sides of the garment (figure 2, identifiers 14 and 15).

It would have been obvious to have provided the shirt of Murakami, Nelson and Patagonia with the pockets of Ketcham et al. located on the side seams of the garment, since the pockets located on the side seams provides greater stability to the pockets when holding heavier objects.

#### ***Allowable Subject Matter***

7. Claims 4 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Campmor, Yoneda, Katz, Castello, Juelg, Jr., Bollag, Bowditch,



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Saggs, Stewart, Shirai, McIntyre, Kester, Egnew, Fayle and Vidal are all cited to show closely related garments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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